As an overview to the off-case:

this off functions as a side-constraint on government action. If the affirmative violates the side-constraint, they lose. If I violate, I lose. If no one violates, we continue onto the case debate. If we both violate, we weigh.

Part 1 is the side-constraint:

The ultimate contractual agreement in the US legal system is the Constitution, which functions as an unbreakable side constraint on government decisions.

First, a Constitutional lens is necessary for an evaluation of role-specific duties. The resolution specified the US, meaning our discussion isn’t hypothetical but grounded in the real world; the resolution affects the actions of specific agents. Thus, discussing justice in general would be totally abstracted from the resolution. The Constitution is the measure of justice specific to the agent in the resolution.

Second, transcendent notions of criminal justice procedure don’t exist. There is huge cultural variation in the meaning of criminal justice procedure. Australian suspects do not have a right to remain silent, Germany and India don’t have trial by jury, and most of Europe and Latin America reject an adversarial trial system. Thus, the only source of justice is to be found in culturally specific Constitutions.

Furthermore, even if there transcendent ideas of justice, it is dangerous to hold them above a written Constitution. Blind assertions of justice can legitimize any popular practice if there is no written and objective final authority to check it against. A written constitution stops those with power from reinterpreting justice to advance their agenda.

Third, the Constitution sets forth a side constraint on US action in that it explicitly limits what the government otherwise has the power to do. Because the power of the government rests in the consent of the states and the general public, to break the constitution would be to destroy its legitimacy, and eliminate its authority to govern. This is supercharged by the fact that those in power of the government have sworn to abide by and protect the Constitution.

Thus, a necessary side constraint on government action is maintaining consistency with the constitution. Therefore, if I show that the affirmative world is not consistent with the constitution, vote negative regardless of how the AC case debate plays out.

Part 2 is the violation:

I contend that a world in which juveniles charged with violent felonies are treated as adults is not consistent with the constitution.

Violation: death penalty

First, treating juveniles as adults necessarily means having the death penalty be an option for punishment since adults can be sentenced to death. However, it is unconstitutional to execute juvenile offenders. The United States Supreme Court held in *Roper v. Simmons[[1]](#footnote-1)* that: “The Eighth and Fourteenth Amendment forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.” Thus, absent an advocacy shift, there is no possible way the affirmative world can be consistent with the Constitution.

The Court justifies why it found the death penalty unconstitutional for juveniles. They write:

**Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders.** **First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young.** These qualities often result in impetuous and ill-considered actions and decisions.” *Johnson*, *supra*, at 367; see also *Eddings*, *supra*, at 115—116 (“Even the normal 16-year-old customarily lacks the maturity of an adult”). It has been noted that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Review 339 (1992). In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent. See Appendixes B—D, *infra*. **The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.** *Eddings*, *supra*, at 115 (“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage”). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. See Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003) (hereinafter Steinberg & Scott) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”). **The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed**. See generally E. Erikson, Identity: Youth and Crisis (1968). **These differences render suspect any conclusion that a juvenile falls among the worst offenders.**

Violation: competency to stand trial

Second, the Supreme Court has reified that proper due process proceedings require all defendants to demonstrate mental competence to stand trial. Grisso et al.[[2]](#footnote-2)

It is well **[Dusky vs. U.S, 1960 and Godinez v. Moran, 1993]** **established that a criminal proceeding meets the constitutional requirements of due process only when the defendant is competent to stand trial, which includes capacities to assist counsel and to understand the nature of the proceeding sufficiently to participate in it and make decisions about rights afforded all defendants** (*Dusky v. U.S.,* 1960; *Godinez v. Moran,* 1993). Although courts and legislatures in some states have determined that youths adjudicated in juvenile court and criminal court must be competent to stand trial, the conventional standard that has been applied focuses on mental illness and disability. In general, there has been little recognition that youths in criminal court may be incompetent due to developmental immaturity (Bonnie & Grisso, 2000; Redding & Frost, 2002).

End quote. And, we are incapable of making individualized determinations of culpability for juveniles, and therefore must treat juveniles differently than adults in order to accurately assess guilt. Gisso[[3]](#footnote-3) explains:

Yet midadolescents might not be afforded equal protection in such circumstances. For reasons related to their stage of development, **adolescents are more at risk than adults of errors in their diagnoses, as well as clinicians' failure to identify the role of mental disorder in their murders.** Concerning errors in diagnosis, **it is widely recognized by child clinical specialists that mental disorders are more difficult to identify for adolescents than for adults** (e.g., Dulit, 1989). This is due primarily to the interaction of mental illness and developmental characteristics of adolescence. **Midadolescents' disorders are not mere replicas of mental illnesses in adulthood. Some youths who are developing psychotic disorders are not easily identified during adolescence**, because the classic symptoms of such disorders-e.g., delusions and hallucinations in schizophrenia-typically are not seen until early adulthood( AmericanP sychiatricA ssociation,1 994; Dulit, 1989). **Similarly, chronic depression frequently is found in adolescents who murder. Yet clinicians often fail to identify depression in adolescents, partly because of the absence of classic signs seen in depressive conditions in adults** (Keller, Lavori, & Beardslee, 1991). Depression in adolescents is more often represented by irritability, hypersensitivity to threat, and agitation-the very conditions that increase the likelihood of aggression (Apter, Plutchik, & van Praag, 1993; Costello, Benjamin, An-gold, & Silver, 1991). Mental disorders among African-American youths are even less likely to be identified, despite evidence that they have higher rates of psychological and behavioral disorders than the general population of youths (for a review, see Issacs, 1992). This is especially relevant for the present argument, in that African-American youths are overrepresented in the juvenile justice system given their proportion in the overall U.S. population. Even when disorders of adolescence are diagnosed reliably, often they are not good predictors of the type of disorder that might develop after midadolescence. For example, clinicians and courts alike often presume that Conduct Disorder is an early sign that the adolescent's condition will stabilize in adulthood as Antisocial Personality Disorder. Yet only a minority of Conduct Disorder adolescents qualify for a diagnosis of Antisocial Personality Disorder when they reach adulthood (AmericanP sychiatricA ssociation,1 994). Similarly, when adolescents are diagnosed Borderline Personality Disorder, upon reaching adulthood they are about equally likely to develop psychoses, or neuroses, or to stabilize as borderline adults (Fards, Hudgens, & Weiner, 1978; Kernberg, 1978). 237

Therefore, **because of their immature development, midadolescents are at greater risk than adults of failure by clinicians, courts, or juries to identify their legally relevant mental states. Mentally disordered adolescents who face serious charges in criminal courts may be at a distinct disadvantage in their access to a plea of not guilty by reason of insanity, as well as special consideration in sentencing based on clinical conditions that can offer mitigation.**

End quote. Thus, vote neg because treating juveniles as adults would make it impossible to assess culpability.

Violation: parents+child

Third, in the adult system, third parties—like the parents—have no right to participate in a criminal trial. This is not true in the juvenile system, as Thomas explains:[[4]](#footnote-4)

**[In the juvenile system] The parent is provided an opportunity to address the court both in writing and orally**. Every parent who is summoned must be provided with a parental written statement form. The parental written statement is returned to the juvenile probation department and then transmitted to the court. Parental Oral Statements. **In addition, after all the evidence has been received, but before the arguments of counsel, the parent shall be given an opportunity to address the court about the needs and strengths of the child, or family,** or any other matter relevant to the disposition of the case. The parent is not required to make that statement under oath, and can not be cross-examined, but clarifying questions by the judge are permitted. The court is not required to follow the parent’s requests, but may consider and act on the statement as the court considers appropriate. Decisive Roles in Court. **There are some proceedings where parents play a decisive role.** Under the Family Code Section 53.03(2) **deferred prosecution requires consent by the child, and his parent, guardian, or custodian.** Detention hearings, outlined in Section 54.01(e)(2), may also look to the parent for suitable supervision, care, and protection as a criteria for releasing the juvenile.

The constitutional implications are explained by Hafen and Hafen:

But the CRC also includes some novel provisions. One of these is an arguably new standard for state intervention in intact families. **Among the fundamental axioms of American law is the doctrine that the parent- child relationship antedates the state just as natural individual rights antedate the state in the Constitution's political theory. Parents are not trustees who receive authority to rear their children through delegations of state power over children. Rather, as the Supreme Court held in distinguishing biological parents from foster parents, the natural parent-child tie is "a relationship having origins entirely apart from the power of the State,"** while a foster placement arranged by state agents "has its source in state law and contractual arrangements." Because of this principle, the Court has said**,** "**the child is not the mere creature of the State," and the social structure-**partly in order to limit state power**-presupposes a system of family units, not just a mass of isolated individuals who all stand in the same relationship to the state**.

Thus, as explained in *Doe v. Irwin[[5]](#footnote-5)*:

The rights which plaintiffs assert here are at the heart of our nation's traditions and collective conscience. It needs no further discussion to conclude that **the right of parents to the care, custody, and nurture of their children is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions**. As such, the rights **[these]** the plaintiffs seek to assert here **are fundamental rights protected by the First, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution**.

End quote. Thus, I outweigh on two levels:

1) Even if the AC is claiming some offense, I claim impacts to the constitutional rights of children AND parents. So I outweigh because I affect a greater scope of actors.

2) At worst for me, the debate about juveniles’ rights is unresolvable because we both claim some offense—so defer to my parents’ impact as an independent constitutional violati

AT No TBJ

1) Former Chief Justice Warran E. Burger[[6]](#footnote-6) explains why not having a jury is not unconstitutional:

**All the litigants here agree that the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship,* is fundamental fairness**. As that standard was applied in those two cases, we have an emphasis on factfinding procedures. **The requirements of notice, counsel**, confrontation, cross-examination, **and standard of proof naturally flowed from this emphasis. But one cannot say that,** in our legal system, **the jury is a necessary component of accurate factfinding.** There is much to be said for it, to be sure, but **we have been content to pursue other ways for determining facts. Juries are not required, and have not been, for example, in equity cases, in workmen's compensation**, in probate, **or in deportation cases.** Neither have they been generally used in military trials. In *Duncan,* the Court stated, "We would not assert, however, that every criminal trial -- or any particular trial -- held before a judge alone is unfair, or that a defendant may never be as fairly treated by a judge as he would be by a jury."

2) Turn: The justification for trial by jury stems from the requirement of fundamental fairness, however, juries are not fair towards juveniles. Connie M. Tang[[7]](#footnote-7) explains:

**The current study examined the possibility that trying juveniles as adults was prejudicial**. One hundred and fifty three undergraduate mock jurors, classified as either prosecution-biased (PB) or defense-biased (DB), participated in the experiment. **The jurors were randomly assigned to read a murder trial summary depicting a 19-year-old adult defendant** (AD-19)**, a 16-year-old juvenile tried as an adult** (JA-16), or a 13-year-old juvenile tried as an adult (JA-13). **Defendant age interacted with juror bias**. **In the [case of the 16 year old]** JA-16 condition, compared with defense-biased jurors, prosecution-biased **jurors found the defendant guilty more often, had higher confidence in the defendant's guilt, and set a lower standard of proof. By all appearances, some jurors might lose neutrality when judging juveniles tried as adults.**

3) Though the right to trial by jury is not important, juvenile courts can still provide this right. Rosenberg[[8]](#footnote-8) writes:

I do not view the loss of even this right [to jury] as catastrophic. After all, **there are relatively few jury trials in the adult criminal court. Instead, the right to trial by jury is primarily a chip to be used in the poker game of plea bargaining – a game of far greater seriousness in the adult courts, where the sentencing stakes, at least for serious offenses, are much higher.** Nonetheless, denial of the jury trial to juveniles as a matter of federal constitutional law is significant. **One way of dealing with the problem is state law reform.** In fact a number of **[16] states** (16) **already grant juveniles such a right as a matter of state law**, and the “new Federalism” is an opportunity for advocates to push for jury trials in juvenile courts.

End quote. Thus, at worst, there is no constitutional violation, because trial by jury is a states issue in the negative world.

1. *Roper v. Simmons,* 2005, 543 U.S. 551 [↑](#footnote-ref-1)
2. Thomas Grisso et al., University of Massachusetts Medical School. Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants. No Date. <http://www.wisspd.org/html/training/ProgMaterials/Juv07/JCST.pdf> [↑](#footnote-ref-2)
3. Thomas Grisso “Society's Retributive Response to Juvenile Violence: A Developmental Perspective,” Law and Human Behavior, Vol. 20, No. 3, Children's Capacities in Legal Contexts (Jun., 1996), pp. 229-247. <http://www.jstor.org/stable/1393974> Department of Psychiatry, University of Massachusetts Medical Center) [↑](#footnote-ref-3)
4. Nydia Thomas. Parental Rights & Responsibilities Juvenile Law Institute. 20th Annual Juvenile Law Conference. February 2007. [↑](#footnote-ref-4)
5. *Doe v. Irwin*, 441 F. Supp. 1247 (D. Michigan 1985), [↑](#footnote-ref-5)
6. U.S. Supreme Court. McKeiver v. Pennsylvania. 403 U.S. 528 (1971). Argued December 10, 1970, Decided June 21, 19 71. [↑](#footnote-ref-6)
7. Connie M. Tang, Narina Nunez [Professor – Department of Psychology, University of Wyoming]. Effects of Defendant Age and Juror Bias on Judgment of Culpability. American Journal of Criminal Justice. Vol. 28 No. 1, 2003. [↑](#footnote-ref-7)
8. Irene Rosenberg – 1993. Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists, Wisconsin Law Review 1993 Wis. L. Rev. (1993). [↑](#footnote-ref-8)